Supreme Court, U. S.
FILED
JUN 14 1977
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-1604

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
Petitioner,

v.

NATIONAL CITIZENS COMMITTEE FOR BROADCASTING,
FEDERAL COMMUNICATIONS COMMISSION
and
UNITED STATES OF AMERICA,
Respondents.

JOINT RESPONSE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JAMES E. GREELEY
LAWRENCE J. BERNARD, JR.

Attorneys for Respondent Owosso Broadcasting Company, Inc.

GREELEY & BERNARD
1990 M Street, N.W.
Suite 660
Washington, D.C. 20036
(202) 785-2690

ROBERT L. HEALD
RICHARD HILDRETH

Attorneys for Respondent WJAG, Incorporated

FLETCHER, HEALD, KENEHAN & HILDRETH
1225 Connecticut Avenue,
Suite 400
Washington, D.C. 20036
(202) 659-9100

THOMAS H. WALL
ALAN C. CAMPBELL
JOHN R. FEORE

Attorneys for Respondent Daily Telegraph Printing Company

DOW, LOHNES & ALBERTSON
1225 Connecticut Avenue, N.W.
Suite 500
Washington, D. C. 20036
(202) 659-8200

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-1604

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
Petitioner,

v.

NATIONAL CITIZENS COMMITTEE FOR BROADCASTING,
FEDERAL COMMUNICATIONS COMMISSION
and
UNITED STATES OF AMERICA,
Respondents.

JOINT RESPONSE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Comes now the respondents listed below, and hereby support the petition for certiorari filed in the above-enumerated case.

IDENTITY OF RESPONDENTS

OWOSSO, MICHIGAN

Owosso Broadcasting Company, Inc., the licensee of Radio Stations WOAP(AM) and WOAP-FM, Owosso, Michigan, is wholly owned by the Owosso Argus Press Company, which publishes the *Argus-Press*, a daily newspaper in Owosso, Michigan.

Owosso is located in central Michigan, approximately 85 miles northwest of Detroit and 80 miles east of Grand Rapids. According to the United States Census, the city's

1970 population was 17,179. Although WOAP and WOAP-FM are the only radio stations providing city grade service to the city of Owosso, the transmitter of a network affiliated VHF television station (WJRT-TV) licensed to nearby Flint, Michigan, is located about 10 miles from Owosso and provides a city grade signal over the city's entire home county of Shiawassee.[1]

The *Argus-Press* was established in Owosso in 1854 and, with the exception of WOAP and WOAP-FM, owns no other media of mass communications. Believing that the city needed a broadcast facility, the newspaper filed an application with the Federal Communications Commission for a 250 watt, daytime only station as soon as materials became available after World War II. The application was filed in December of 1946 and WOAP began operations in December of 1947. In 1959, the station's power was increased from 250 watts to 1000 watts.

In an effort to provide Owosso with a full-time local broadcast service, Owosso Broadcasting Company, Inc. filed an application with the Commission for an FM station in 1963. The application was granted, the station constructed and WOAP-FM, a 3000 watt local FM station, began operation in 1965.

In the almost 30 years since the owners of the *Argus-Press* became radio station licensees, the Commission has examined the operations of the station(s) each three years and has regularly found that license renewal would be in the public interest. The most recent renewals were granted in September of 1976.

NORFOLK, NEBRASKA

WJAG, Incorporated, is the licensee of broadcast stations WJAG(AM) and WJAG-FM, Norfolk, Nebraska.

---

[1] Television Factbook (1977 Ed.), p. 416(b).

WJAG, Incorporated is wholly owned by Huse Publishing Company, the publisher of the *Norfolk Daily News*.

Norfolk, Nebraska, is a town of approximately 16,000 persons. Huse placed WJAG(AM) on the air in 1922. It was the second station to commence broadcast operations in Nebraska. WJAG(AM) has been licensed and relicensed to operate under the same ownership for 54 years as a result of Commission determinations that WJAG's operation was in the public interest.

WJAG's commitment to community service is also exemplified by the history of WJAG-FM. Since WJAG (AM) was a daytime only station, WJAG sought to provide a full-time aural service by requesting the allocation of an FM channel to Norfolk, Nebraska. It then opposed a switch in allocated frequencies which had the potential of creating interference to television reception in the Norfolk area. WJAG-FM was placed on the air on July 26, 1971.

Huse Publishing Company has published the *Norfolk Daily News* since 1887. The *Daily News* is published six days a week and has a daily circulation of approximately 21,000.

BLUEFIELD, WEST VIRGINIA

Daily Telegraph Printing Company ("Daily Telegraph") is the licensee of broadcast stations WHIS(AM), WHAJ(FM) and WHIS-TV, Bluefield, West Virginia, a community of approximately 16,000 persons. Daily Telegraph is also the publisher of the *Bluefield Daily Telegraph*, a daily newspaper in Bluefield.

Daily Telegraph put Station WHIS(AM) on the air in 1929 and has owned and operated the station since that date. The FM station, WHAJ, was initially activated in the late 1940's and, after going off the air during the 1950's, has continued in service since 1963. Daily Telegraph was responsible for persuading the Commission

to amend the Table of Television Assignments to assign Channel 6 to Bluefield as a first useable VHF allocation for that area and, as a result, activated WHIS-TV in 1955. Daily Telegraph has published the *Bluefield Daily Telegraph* since 1896.

Thus, for almost half a century the common media ownership in Bluefield has been known and approved by the Commission.

REASONS FOR GRANTING CERTIORARI

Respondents are three of a number of very small newspaper-broadcast combinations adversely affected by the Court of Appeals' decision which requires divestiture without regard to prior meritorious service or the consequences to the public or the licensee.[2] Some of these operations were subject to divestiture pursuant to the Federal Communications Commission's decision in *Multiple Ownership*, 50 F.C.C.2d 1046, *reconsidered*, 53 F.C.C.2d 589 (1975);[3] others, however, are now faced with divestiture for the first time.

The Court of Appeals' decision could cause wholesale disruption in many smaller markets. Attached as an Appendix to this Response is a list of the thirty-seven communities with populations of 20,000 or less which will be affected by the order. The owners operating in

---

[2] National Citizens Committee for Broadcasting v. Federal Communications Commission, No. 75-1064 (D. C. Cir., decided March 1, 1977). The decision is reprinted in "Petitioner's Appendix" filed by the Federal Communications Commission in No. 76-1471 at p. 1. Hereinafter, said Appendix will be cited as "FCC App."

[3] FCC App. at 61-158. The Court of Appeals found the Commission's selection of these markets for divestiture to be "arbitrary". *Id.* at 59. However, the Court ultimately concluded that all co-located, co-owned, newspaper-broadcast properties were subject to divestiture regardless of market circumstances.

such small markets, in most instances local citizens with long histories of service to their small communities, face the gravest of consequences. In some instances, the broadcast property generates revenues used to support the newspaper.[4] Thus, the Court's decision at worst will constitute a death knell for some small town owner-publishers and at best will result in diminishing rather than enhancing the quality and quantity of local media service in many small communities throughout the United States.

As the American Newspaper Publishers Association, Petitioner in No. 76-1604, has indicated, the Court below ignored fundamental constitutional questions in upholding the Federal Communications Commission's attempt to bar daily newspaper publishers as a class from holding broadcast licenses to serve their local communities. Further, the Court misapplied Commission and judicial precedent when it concluded as a matter of law that diversity of ownership is the paramount element, to the virtual exclusion of all other criteria, to be considered in determining the public interest, convenience and necessity under the Communications Act of 1934, as amended [47 U.S.C. §151 *et seq.* (1970)]. This revolutionary conclusion was reached by the Court without regard to the record compiled in the rulemaking proceeding before the Commission. The Court, quite simply and improperly, substituted its judgment for that of the Federal Communications Commission.

In summary, it is respectfully submitted that the petition for certiorari filed in this proceeding should be granted because it presents "an important question of federal law which has not been, but should be, settled by this Court," and that the court below "so far departed

---

[4] A fact alleged by a number of joint owners in the rulemaking proceeding. Multiple Ownership, 50 F.C.C. 2d 1046, 1067 (1975); FCC App. at 82.

from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this court's power of supervision." Supreme Court Rule 19(1)(b).

Respectfully submitted,

JAMES E. GREELEY
LAWRENCE J. BERNARD, JR.

Attorneys for Respondent Owosso Broadcasting Company, Inc.

GREELEY & BERNARD
1990 M Street, N.W.
Suite 660
Washington, D. C. 20036
(202) 785-2690

ROBERT L. HEALD
RICHARD HILDRETH

Attorneys for Respondent WJAG, Incorporated

FLETCHER, HEALD, KENEHAN & HILDRETH
1225 Connecticut Avenue,
Suite 400
Washington, D. C. 20036
(202) 659-9100

THOMAS H. WALL
ALAN C. CAMPBELL
JOHN R. FEORE

Attorneys for Respondent Daily Telegraph Printing Company

DOW, LOHNES & ALBERTSON
1225 Connecticut Avenue, N.W.
Suite 500
Washington, D. C. 20036
(202) 659-8200